Lordships are of the opinion that it gives just enough to show that a triable issue exists.

The Federal Court considered that it was arguable that the letter formed part of the total agreement relating to such machines as were referred to in paragraphs 4 and 5. But they took the view that the option to purchase which was given could only refer to the three machines covered by the first three agreements, which were enclosed with the letter, and that it could not refer to the subsequent leasings. Their Lordships agree that the letter is capable of being read as referring to an option to purchase the machines referred to in the first three agreements but they are of opinion that it is capable of referring also to the other six agreements. They consider that it might be regarded, not as a contractual document, in the sense of containing the actual terms of the contract between the parties, but rather as part of the background against which all nine agreements fall to be construed. Paragraph 4 refers to the purchase of "another seven or eight units" and it is, in the opinion of their Lordships, arguable that that is a reference to the six machines which were eventually subjects of the later agreements. Indeed, having regard to the fact that in the appendix of each of the nine agreements the residual value is stated at the same figure of $1.00, it appears to be arguable that all nine agreements were of the same character, whatever it may have been. Accordingly their Lordships consider that the proper course is to give leave to the appellants to defend in respect of all nine agreements.

That opinion is reinforced by consideration of the variation agreements dated June 23, 1977. The schedule to each of these agreements states the total amount outstanding under the original Equipment Lease Agreement to which it relates, after certain additions and deductions it brings out a new figure of total rental and a new monthly rental. In each case the new monthly rental (payable from October 1, 1976 until September 1, 1979) is lower than the original monthly rental. In each case also the "residual value" is very much higher than the original amount of $1.00. It would appear that a probable explanation of the varied figure is that, in consideration of payment of the total rental having been deferred, and of the reduction of the monthly instalments, the residual value has been increased, but that the parties still intended that the lessees were to have an option to purchase at the new residual value.

For these reasons their Lordships will advise His Majesty the Yang di-Pertuan Agong (1) that the appeal should be allowed, the orders of the Federal Court and the High Court set aside and the order of the Senior Assistant Registrar restored; (2) that the case be remitted to the Federal Court for that Court to make any orders that may be necessary as to further procedure in the light of their Lordships' judgment and (3) that the respondents pay to the appellants the costs of these proceedings so far in the High Court and the Federal Court and of the appeal to this Board but that the costs of the proceedings before the Registrar be costs in the cause.

The proceedings will now revert to the position in which they stood immediately after the Registrar's decision on November 3, 1978. The only result of the respondents' persistence in seeking an order for summary judgment is that four years and much money have been wasted.

Appeal allowed.

Solicitors: *Kingsford Dorman; Herbert Smith.*

MERCHANT CREDIT PTE. LTD. v. INDUSTRIAL & COMMERCIAL REALTY CO. LTD.

[P.C. (Lord Fraser of Tullybelton, Lord Scarman, Lord Bridge of Harwich, Lord Brandon of Oakbrook and Lord Templeman) November 29 & 30, 1982 and January 27, 1983]

[Privy Council Appeal No. 20 of 1981]

Company Law – Shares – Purchase of – Whether shareholders have a right to refund – Illegal reduction of capital.

The appellant company in this case was incorporated pursuant to a shareholder's agreement dated March 28, 1972 and made between the Industrial and Commercial Bank Ltd., Arthur Lipper International Ltd. and a Mr. Sinclair. The initial share capital of $300,000 was issued. In late 1972 and early 1973 the directors of the appellant company decided to invest in an ice skating project in Kuala Lumpur, Malaysia. It was agreed that land and equipment for the project should be purchased in Kuala Lumpur amounting to about $970,000. Pursuant to this further shares were subscribed in the following proportions – Arthur Lipper International Ltd.– 332,500 shares, Industrial & Commercial Bank 332,500 shares and Mr. Sinclair 35,500 shares. Arthur Lipper International Limited paid for its shares and the International & Commercial Bank Ltd. caused the respondent company, its subsidiary to pay for its shares. The share application money was paid into the appellants company's bank account as agreed by the parties. The issue of the shares was deferred "until the ice skating project proved to be a going concern". Work on the Kuala Lumpur project was started in 1973 but in December 1974 the project was abandoned as planning permission could not be obtained. The respondents de-

manded the return of the sum of $332,500 and interest. On March 31, 1976 the appellant company allotted 332,500 shares to the respondent company. The respondent company brought the action to claim the refund of the sum of $332,500 and interest.

Choor Singh J. in his judgment delivered on August 30, 1979 rejected the submission that "the sum of $332,500 was given ... as a loan to be used as capital in the ice skating project in Kuala Lumpur and that there was an express or implied term that if the project was successful the said loan would be discharged in consideration of the issue of shares ... and if the project was not successful, the loan would be repaid on demand or within a reasonable time". The learned judge said that this submission was not supported by the evidence. He concluded that I.C.R. wished "to withdraw the capital which they injected into Merchant Credit for financing the ice skating project in Kuala Lumpur. They wished to do so because the Kuala Lumpur project has failed". The learned judge rejected the claim of I.C.R. for payment of $332,500 and interest and granted Merchant Credit a declaration that I.C.R. were shareholders holding 332,500 shares. See [1980] 1 M.L.J. 208.

The Court of Appeal in Singapore reversed the trial judge. In their judgment delivered on September 26, 1980 they concluded that "the proper inference to be drawn from the undisputed facts was that Merchant Credit had treated the monies of I.C.R. (and of A.L.I.) in the share application account as a loan". They also said:

"Indeed, after the project was abandoned Merchant Credit accepted the position, it accepted the liability to repay to I.C.R. the sum of $332,500 ... Merchant Credit cannot be allowed to contend that it was legally entitled in March 1976 to issue to I.C.R. 332,500 shares. As a matter of law, the right of Merchant Credit to issue shares to I.C.R. if in fact there was a right, failed because Merchant Credit had as early as January 1975 waived its right and I.C.R. was entitled to repudiate the contract, if ever there was one, and claimed the refund of $332,500 together with interest at 12% from the date of payment to the date of settlement."

The Court of Appeal concluded that Merchant Credit having, for over a year, treated the monies of I.C.R. (and of A.L.I.) as loan, it was not "just and equitable to allow Merchant Credit in March 1976, months after I.C.R. had demanded repayment, to issue shares ..."

The appellants appealed.

Held allowing the appeal: (1) the sole question on the evidence in this case was whether the appellant company agreed that the respondent company would be entitled to repayment of $332,500 if and when the ice-skating project "did not prove to be a going concern". The learned trial judge was right in holding that no such agreement had been proved;

(2) the respondent company had failed to establish that their application for shares in the appellant company was subject to any contractual condition before or after the date of their application;

(3) the appellant company could not convert or agree to convert their equity capital into a loan, conditionally or unconditionally and repay the loan without reduction in capital which no company could effect without the leave of the court;

(4) the appellant company had no power to rescind the contract for shares and to return the application moneys as moneys borrowed or as moneys had and received because an illegal reduction of capital would thereby be involved;

(5) circumstances may arise in which either a company or an applicant for shares or both may become entitled to rescind a relevant contract. In this case the appellants were neither able nor willing to rescind the contract and the respondent company having agreed to the deferment of the issue of the shares were only entitled to put an end to that deferment; they were not entitled to claim the return of their application monies.

Cases referred to:

(1) *Re Florence Land and Public Works Company, Nicol's case* (1884) 29 Ch. D. 421.

(2) *Re Cheshire Banking Company, Duff's Executors' Case* (1885) 32 Ch. D. 301.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

T.L.G. Cullen Q.C. (*Mrs. Helen Yeo Cheng Hoong* with him) for the appellant.

William Stubbs Q.C. (*Leslie G. Kosmin* with him) for the respondent.

Cur. Adv. Vult.

Lord Templeman (delivering Judgment of the Board): The question raised by this appeal is whether the respondent Industrial & Commercial Realty Company Limited is entitled and bound to be registered as the holder of 332,500 fully paid shares of $1.00 in the appellant Merchant Credit Private Limited or whether, as the respondent claims, it is instead an unsecured creditor of the appellantor company in the sum of $332,500.

The appellant ("Merchant Credit") was incorporated pursuant to a shareholders' agreement dated March 28, 1972 and made between the Industrial & Commercial Bank Limited ("I.C.B."), Arthur Lipper International Limited ("A.L.I.") and a Mr. Sinclair. Clause 2 provided that all the issued share capital of Merchant Credit should be subscribed for in the proportions of 47.5% by I.C.B., 47.5% by A.L.I. and 5% by Mr. Sinclair. By Clause 3 I.C.B. and A.L.I. agreed, upon the request of the Board of Directors of Merchant Credit, to advance to Merchant Credit by way of loan in equal shares all monies required from time to time by Merchant Credit for its operating expenses. The primary objects of Merchant Credit were intended to be the carrying on of the business of merchant banking, underwriters, financiers and an-

cillary purporses but the memorandum of association of Merchant Credit enabled the Company to indulge in the purchase and development of land and to engage in any trade or speculative venture.

Merchant Credit was incorporated in Singapore and by April 1973 had an authorised share capital of 1,000,000 shares of $1.00 each. 300,000 shares had been subscribed for and issued in the agreed proportions. The directors of Merchant Credit were Mr. Hwang, who was the chairman and was the nominee of I.C.B., Mr. Crafter who was the nominee of A.L.I. and also the secretary of Merchant Credit, and Mr. Sinclair.

In April 1973 Mr. Crafter and Mr. Hwang inspected and approved the purchase by Merchant Credit of a site at Kuala Lumpur which was zoned for residential purposes which they hoped to develop as an ice skating complex. They also approved the purchase of certain ice skating equipment.

On May 11, 1973 Mr. Crafter wrote to Mr. Hwang and Mr. Sinclair informing them that the cost of the equipment was $585,851 and the cost of the site a further $484,000. After taking into account certain expenses and cash in hand Mr. Crafter concluded that:–

"I therefore see our immediate needs for additional capital or loan as follows:

I.C.B.	479,700
A.L.I.	479,700
Sinclair	50,500

Our authorized is presently $1,000,000 and paid up $300,000. Will you please

1. arrange to pay into Merchant Credit the above amounts?

2. inform me whether you consider that these payments to be an increase of paid up capital (authorized must be increased) or as loan funds. I recommend that it should be additional paid up."

At an extraordinary General Meeting of Merchant Credit held on June 20, 1973 attended by the three directors by the unanimous agreement of all the shareholders the authorised capital was increased from $1,000,000 to $2,000,000 by the creation of a further 1,000,000 shares of $1 each.

I.C.B. and A.L.I. each agreed to subscribe 332,500 shares. I.C.B.'s shares were to be paid for and taken up the respondent company Industrial & Commercial Realty Company Limited ("I.C.R.") which was a wholly owned subsidiary of I.C.B. Accordingly on June 28, 1973 I.C.R. wrote to Merchant Credit applying for 332,500 shares and enclosing a cheque for $332,500. On the same day Merchant Credit acknowledged receipt from I.C.R. of $332,500 "in payment of application for 332,500 shares of $1 each".

The monies required by Merchant Credit to pay for the ice skating equipment and the site were initially advanced by A.L.I. When I.C.R. applied and paid for 332,500 shares, A.L.I. also applied for 332,500 shares and credited the purchase price against their outstanding loans to Merchant Credit. Merchant Credit applied the monies received from I.C.R. and A.L.I. towards the purchase of the ice skating equipment and the site. The balance of the monies required by Merchant Credit exceeding $600,000 was advanced by A.L.I. alone. It does not appear that I.C.B. and A.L.I. insisted on Mr. Sinclair subscribing 5% of the share capital required in accordance with clause 2 of the shareholders' agreement. Nor does it appear that A.L.I. insisted that I.C.B. provide half the loans exceeding $600,000 required by Merchant Credit in addition to the share capital.

The application by I.C.R. for 332,500 shares in Merchant Credit on June 28, 1973 accompanied by a cheque in full payment was made in fulfilment of the obligations of I.C.B. and in the knowledge that A.L.I. had adopted a corresponding obligation and in the knowledge that Merchant Credit would immediately utilise the monies received for shares in the purchase of land and equipment. In these circumstances the letter of application from I.C.R. and the receipt of the same date from Merchant Credit constituted an offer and acceptance and created a binding contract whereby in consideration of the payment by I.C.R. of $332,500 Merchant Credit became bound to issue and allot and register 332,500 shares in the name of I.C.R. That contract could only be avoided or varied if Merchant Credit had power to do so and if Merchant Credit, I.C.R., A.L.I. and possibly Mr. Sinclair all agreed.

Shortly before or shortly after June 28, 1973 Mr. Hwang suggested in separate conversations with Mr. Crafter and Mr. Sinclair that the issue of shares be deferred. According to the notes taken by the trial judge Choor Singh J. of the oral evidence of Mr. Hwang taken in these proceedings on July 15, 1979 "the issue of shares was deferred until the ice skating project proved to be a going concern. This was discussed and agreed to by all directors. If the project did not prove to be a going concern I don't think the shares were to be issued.

If, for one reason or other, we could not proceed with this project the money was to be refunded". In cross-examination Mr. Hwang could not say whether the suggestion not to issue shares was made before or after June 28, 1973 and he accepted that his "intention was perhaps that something may go wrong, the land deal may not go through and the project may not start at all and therefore there was no need to issue shares forthwith". In evidence on July 17, 1979 Mr. Crafter remembered that Mr. Hwang's "intention was that shares should not be issued until the project got going. No one objected to this suggestion. This was just a casual suggestion". In the ledger book of Merchant Credit, $332,500 received from I.C.R. on June 28, 1973 and the sum of $332,500 credited from A.L.I. on June 30, 1973 was shown in a share application account as "additional share of increased capital".

In the accounts of Merchant Credit for the year ending March 1974 signed on December 20, 1974 the issued share capital of Merchant Credit was shown as $300,000. The current liabilities consisted mainly of $1,075,412 due to A.L.I. and $332,500 due to I.C.R. and it is common ground that these sums included the sums paid on the applications by A.L.I. and I.C.R. for shares in June 1973. A similar provision was made in the accounts for the year ending March 31, 1975 but by the time these accounts were signed the dispute between the parties had been formalised.

About July 1974 the ice skating project was abandoned because planning permission could not be obtained. Merchant Credit held shares in the company which held the land at Kuala Lumpur which was then considered still to be saleable at a profit. I.C.B. became anxious to disengage from Merchant Credit and by a letter dated December 19, 1974 Mr. Lipper on behalf of A.L.I. offered to buy 142,500 shares of Merchant Credit then held by I.C.B. at par, and to indemnify and release I.C.B. and I.C.R. against any liability or obligation. It was a term of the purchase that Merchant Credit "shall ... return to I.C.R. $332,500 held in the share application account but reflected on the balance sheet as a loan". On January 7, 1975 the board of Merchant Credit were informed that A.L.I. had offered to buy and I.C.B. had agreed to sell 142,500 shares in Merchant Credit for $192,500 and resolved to raise a loan "in order to refund to I.C.R. the sum of $332,500 that it had originally paid for additional share capital". No binding contract was however concluded between A.L.I. and I.C.B. and on February 7, 1975 A.L.I. suggested that all the assets of Merchant Credit should be sold, the creditors paid in full and the surplus distributed between the shareholders. Mr. Hwang acknowledged at a later board meeting that this suggestion had been agreed by I.C.B. On April 30, 1975 the board of Merchant Credit resolved that the ice skating equipment and site be sold and the proceeds "applied to the repayment of the funds due to I.C.R. and A.L.I. presently held in the 'share application account' of the Company". It was also resolved that interest be paid on the share application monies at 12% as from December 1, 1974. Mr. Hwang voted against the resolution as to interest on the grounds that the land and ice skating equipment in Kuala Lumpur had been purchased by the company mainly from funds held in the share application account and subscribed by I.C.R. and A.L.I. and that both these assets which had appreciated in value would be likely, on their sale, to generate some profits which should be distributed "by way of payment of interest". After further attempts to disengage I.C.B. from Merchant Credit, on July 5, 1975 I.C.R. demanded $332,500 and interest from June 28 1973. On March 31, 1976 Merchant Credit alloted 332,500 shares to I.C.R. And on April 3, 1976 I.C.R. issued the writ in these proceedings claiming $332,500 and interest from June 28, 1973.

Choor Singh J. in his judgment delivered on August 30, 1979 rejected the submission that "the sum of $332,500. was given. ..... as a loan to be used as capital in the ice skating project in Kuala Lumpur and that there was an express or implied term that if the project was successful the said loan would be discharged in consideration of the issue of shares ... and if the project was not successful, the loan would be repaid on demand or within a reasonable time". The learned judge said that this submission was not supported by the evidence. He concluded that I.C.R. wished "to withdraw the capital which they injected into Merchant Credit for financing the ice skating project in Kuala Lumpur. They wished to do so because the Kuala Lumpur project has failed". The learned judged rejected the claim of I.C.R. for payment of $332,500 and interest and granted Merchant Credit a declaration that I.C.R. were shareholders holding 332,500 shares.

The Court of Appeal in Singapore reversed the trial judge. In their judgment delivered on September 26, 1980 they concluded that "the proper inference to be drawn from the undisputed facts was that Merchant Credit had treated the monies of I.C.R. (and of A.L.I.) in their share application account as a loan". They also said:—

"Indeed, after the project was abandoned Merchant Credit accepted the position, it accepted the liability to repay to I.C.R. the sum of $332,500 ... Merchant Credit cannot be allowed to contend that it was legally entitled in March 1976 to issue to I.C.R. 332,500 shares. As a matter of law, the right of Merchant Credit to issue shares to I.C.R., if in fact there was a right, failed because Merchant Credit had as early as January 1975 waived its right and I.C.R. was entitled to repudiate the contract, if ever there was one, and claimed the refund of $332,500 together with interest at 12% from the date of payment to the date of settlement."

The Court of Appeal concluded that Merchant Credit having, for over a year, treated the monies of I.C.R. (and of A.L.I.) as a loan, it was not "just and equitable to allow Merchant Credit in March 1976, months after I.C.R. had demanded repayment, to issue shares ..."

Their Lordships do not consider that there can be any question of estoppel or waiver because the deferment of the issue of shares had been agreed and I.C.R. never acted to their detriment in the belief encouraged by Merchant Credit that they were to be repaid. The Court of Appeal of Singapore appear to have relied strongly on the accounts of Merchant Credit for the years ending March 31, 1974 and March 31, 1975 and also on the efforts made to sell the assets for the purpose of repaying I.C.R. in the course of the negotiations between I.C.B. and A.L.I. But the sole question on the evidence is whether Merchant Credit agreed that I.C.R. would be entitled to repayment of $332,500 if and when the ice skating project "did not prove to be a going concern". Their Lordships agree with the trial judge that no such agreement was proved. The only effect of the suggestion made by Mr. Hwang and accepted by Mr. Crafter and Mr. Sinclair that the issue of the shares be deferred until the ice project proved to be a going concern was to relieve Merchant Credit of the obligation to issue the shares forthwith. Mr. Hwang was in doubt as to what he meant by suggesting that the issue of shares should be deferred until the ice skating project proved to be a going concern. Mr. Crafter did not attach any importance to the suggestion. The three shareholders had originally agreed that the monies required by Merchant Credit should be raised in the form of equity capital to the extent of $655,000 and not loan capital. It is not clear that Mr. Hwang intended to make a radical alteration in that agreement, he was not understood by Mr. Crafter to make any radical alteration and the form and circumstances of the conversations in which the suggestion was made wholly failed to establish an agreed intention to make a substantial variation to the proposal to put up share capital. There was no sense in resiling from the decision to put up share capital in order that I.C.R. might be able to demand from Merchant Credit $332,500 at a time when on failure of the project Merchant Credit might not be in a position either to find or to raise the required monies. The effect of enabling I.C.R. to demand money instead of shares would have been seriously prejudicial to A.L.I. which had made further loans to Merchant Credit notwithstanding I.C.B.'s obligation under the shareholders' agreement to advance half of the monies required.

Their Lordships consider that I.C.R. failed to establish that I.C.R.'s application for shares in Merchant Credit was subject to any contractual condition before or after the date of their application. It is significant that when all else was recorded in April, May and June of 1973 there was no reference to the condition which I.C.R. now seek to prove and enforce. The Court of Appeal of Singapore were impressed by the accounts of Merchant Credit and by the efforts made to sell the assets and to repay I.C.R. The accounts are of no probative value in the circumstance and are not sufficient to contradict the oral and written evidence as to what took place in June 1973. It was impossible for the auditors to show in the accounts an issued capital of more than 300,000 shares. It was convenient, if inaccurate, to include the application monies under the heading of current liabilities. The efforts to sell the assets and to repay I.C.R. formed part of the negotiations for the sale of the shares of I.C.B. in Merchant Credit. The alternative which was for A.L.I. to put up a further $332,500 to buy out I.C.B. and I.C.R. would plainly not have been acceptable to A.L.I. and no one paused to consider whether Merchant Credit was entitled to pay $332,500 to I.C.R. as a term of the agreement for the purchase by A.L.I. of the shares of I.C.B. in Merchant Credit. Mr. Crafter's evidence which is consistent with the facts and which was not challenged was that "there were negotiations going on between I.C.B. and A.L.I., but in my view they were not entitled to a refund of the additional capital".

There is a further obstacle in the path of I.C.R. There is no evidence that Mr. Hwang suggested the deferment of the issue of shares before June 28, 1973 when I.C.R. applied for the shares without mentioning any deferment. If Mr. Hwang suggested a deferment of the issue of shares after June 28, 1973, meaning thereby that the application monies would be refunded to I.C.R. if the ice skating project proved a failure, Merchant Credit had no power to agree to make any such refund. On June 28, 1973 Merchant Credit accepted and

thereupon employed $332,500 as a subscription from I.C.R. for 332,500 fully paid shares. Thereafter Merchant Credit could not convert or agree to convert their equity capital into a loan, conditionally or unconditionally, and repay the loan without a reduction in capital which no company can effect without the leave of the court.

On behalf of I.C.R. Mr. Stubbs submitted in the first place that there never was a binding agreement between I.C.R. and Merchant Credit. There was only an offer made on June 28, 1973 by I.C.R. to subscribe for shares and that offer was withdrawn in 1975 before it was accepted and completed by the issue of shares. This submission is, however, quite inconsistent with the undisputed facts and agreements which led I.C.R. to apply and pay in full for the shares on June 28, 1973 and which led Merchant Credit to accept the application and employ the application monies in the purchase of land and equipment. There was a binding contract and all that remained was fulfilment of the obligation, later deferred by agreement, for the shares to be issued and registered.

Mr. Stubbs submitted in the second place that Merchant Credit had not pleaded any contract between Merchant Credit and I.C.R. It is too late in the day to raise this pleading point and in any event from a fair reading of Merchant Credit's pleadings it is clear that a binding contract between Merchant Credit and I.C.R. for the issue of shares was the essence of the case put forward by Merchant Credit in these proceedings from the very beginning.

Mr. Stubbs submitted in the third place that by reason of the suggestion for deferment made by Mr. Hwang, any contract between Merchant Credit and I.C.R. was either a contract for a loan by I.C.R. convertible into shares if the ice skating project proved to be a going concern or a contract for shares conditional on the ice skating project proving a going concern, so that on failure the application monies were returnable by Merchant Credit as money had and received. But as the trial judge pointed out the evidence does not support these submissions. The application and receipt in writing dated June 28, 1973 are eloquently silent concerning any contract other than an unconditional contract for shares and the oral evidence was vague and uncertain as to the meaning of the suggestion put forward by Mr. Hwang for the deferment of the issue of the shares, a suggestion which was accepted without debate and which, if Mr. Stubbs is right, was contrary to the interests of Merchant Credit and A.L.I. and contradicted the agreement that the monies required for the ice skating project should be raised as to $665,000 in the form of equity capital.

Fourthly, Mr. Stubbs contended that any contract for shares concluded on June 28, 1973 was subsequently rescinded and it was agreed that the subscription monies should be repaid by Merchant Credit, if possible out of the proceeds of sale of the land. Mr. Stubbs relied on the accounts of Merchant Credit and also on the records of the meetings of the directors of Merchant Credit which authorised the sale of the land and repayment. But the accounts are not evidence of rescission and the records of the directors' meetings and other correspondence only show that, as a term of the proposed purchase, never in fact agreed, by A.L.I. of the interests of I.C.B. or as part of a proposed liquidation, never carried out, which would disengage I.C.B. from the affairs of Merchant Credit, provision would be made for I.C.R. to receive $332,500 in respect of the monies which I.C.R. had paid as application monies for shares.

Mr. Stubbs faced the further difficulty that Merchant Credit in any event had no power to rescind the contract for shares and to return the application monies as monies borrowed or as monies had and received because an illegal reduction of capital would thereby be involved. On this aspect of the matter, Mr. Stubbs relied on *re Florence Land and Public Works Company, Nicol's Case*(1) for the proposition that a company may rescind a contract for shares provided that the shares have not been issued and registered. But that case only decided that a company which had cancelled an allotment of unpaid shares to the original applicants and made a fresh allotment to new subscribers who were registered as the holder of the shares was not entitled to reverse the process and to substitute the original applicants for the new subscribers on the register. The company did not seek to return any capital to a shareholder or any one else but only to substitute one shareholder for another.

In *re Cheshire Banking Company, Duff's Executors' Case*(2) on the other hand, where executors applied for shares and the company accepted the application by letter, it was held that the letters constituted a contract for shares which could not be rescinded. Fry L.J. commented, at page 311, in words which are apt to describe the instant case that "neither the applicants nor the company had a very accurate understanding as to what their relations were, and they bungled about the matter, but

I cannot find any contract which put an end to the previous contract, and I think if the company had so contracted they would have done so without authority, for they had no right to rescind the contract for the allotment of the shares".

Of course circumstances may arise in which either a company or an applicant for shares or both may become entitled to rescind a relevant contract. But in the present case Merchant Credit were neither able nor willing to rescind the contract and I.C.R., having agreed to the deferment of the issue of the shares, were only entitled to put an end to that deferment; they were not entitled to claim the return of their application monies.

Their Lordships will allow the appeal. The order of Choor Singh J. should be restored and the respondent I.C.R. be ordered to pay the costs of the appellant Merchant Credit of the proceedings before the trial judge, the Court of Appeal in Singapore and the Board.

Appeal allowed.

Solicitors: *Douglas Goldberg & Co.; Norton, Rose Botterell & Roch.*

SINGAPORE REPORTS

CHAN KAI KAH & ANOR. v. TAN KING KOH

[C.A. (Kulasekaram, Lai Kew Chai & Chua JJ.) November 22, 1982]
[Singapore – Civil Appeal No 6 of 1982]

Landlord & Tenant – Claim for possession – Burden on landlord to prove premises rent-controlled – Decision of trial judge in giving judgment for the plaintiff reversed by High Court – Appeal – Appeal allowed.

Practice & Procedure – Trial judge dealt exhaustively with evidence – Decision of trial judge affirmed.

The plaintiffs purchased the land and premises at No. 215-D Balestier Road. They claimed for possession of the said premises from the defendant. The defendant relied on the provision of the Control of Rent Act (Cap. 266) and claimed protection under it. The learned trial judge gave judgment for the plaintiffs. The High Court allowed the defendant's appeal (see [1982] 2 M.L.J. 141). The plaintiffs appealed against the High Court decision.

Held, allowing the appeal: (1) the High Court erred in holding that "the trial judge approached the whole case as if the burden of proof was on the defendant and not on the plaintiffs";

(2) the trial judge dealt exhaustively with the evidence adduced by the defendant in his grounds of decision. There was therefore no reason to interfere with the findings of the trial Judge.

Case referred to:

(1) *Leong Yoong* v. *Lee Sem Yoong* [1968] 2 M.L.J. 72.

COURT OF APPEAL.

Kirpal Singh for the appellants.

B. Mohan Singh for the respondent.

Cur. Adv. Vult.

Chua J. (delivering the Judgment of the Court): This appeal arises from a claim for possession by the Appellants (Plaintiffs) against the Respondent (Defendant) of the premises known as No. 215-D, Balestier Road, Singapore, (the said premises) in District Court Summons No. 1937 of 1980. The District Judge gave judgment for the Appellants for possession of the said premises. The Respondent appealed and the High Court allowed the appeal. The Appellants appealed to this court. We allowed the appeal and now give our reasons.

The Plaintiffs purchased the land and the said premises thereon on September 30, 1969.